IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5368 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANTILAL MAGANLAL & 3 - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR GM JOSHI for Petitioner(s) : 2 - 4.
MS NISHA PARIKH AGP for Respondent(s) : 1 - 3.
MR AR THACKER for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/04/2007

ORAL JUDGMENT

1. Mr.G.M. Joshi, learned counsel for the petitioner, Ms.Nisha Parikh, learned Assistant Government Pleader for the respondent Nos.1 to 3 – State and Mr.A.R.Thacker, learned counsel for the respondent No.4.

2. This petition raises a very short question that whether the Mutation Entries made in the year 1982 and 1990 could be set aside on a notice issued on 20/12/1995.

3. The land bearing Survey No.40 belonged to one Moganbhai Govanbhai, said to be cousin of the petitioner No.1. On 21/6/1978, the petitioner made payment of Rs.13,001=00 against sale price of Rs.56,175=00. On 24/6/1981, the said Maganbhai Govanbhai entered into an agreement with the petitioner to sell the entire land of Survey No.40 for a sum of Rs.2,50,000=00. Thereafter, certain amount was paid and according to the petitioner, entire sale consideration was paid.

4. On 22/4/1982, Mutation Entry No.699 was made in the Village Form No.6, mutating therein the name of the petitioner No.1. Undisputedly, upto 22/4/1982, the petitioner has not obtained any registered document in his favour conveying the title relating to the land in favour of the petitioner.

5. On 5/7/1990 yet another Mutation Entry No.803 was made in the Village Form No.6 mutating the name of wife, son and daughter of the petitioner No.1. After finding that such entries were bad, respondent No.3 in exercise of his revisional jurisdiction issued a notice to the petitioner to

show cause that why Mutation Entry Nos.699 and 803 be not cancelled. The petitioner filed his reply. However, the Collector directed cancellation of the Entries, being aggrieved by the said direction, the petitioner took up an appeal before the respondent No.2 who also dismissed the appeal. The petitioner is now before this Court.

6. A Mutation Entry ordinarily can be said to be for fiscal purposes but the moment rights and title are transferred, then such Mutation Entry becomes entry of title.

7. In the present case, the petitioner No.1 got his name mutated as an owner of the property and not otherwise.

8. One can understand an entry in a case, if the name of the person was recorded as a person in possession of the land. Unfortunately, without a title deed in favour of the petitioner, the petitioner got his name mutated, such an act was illegal and even the consent of the original landlord / owner to the mutation in favour of the petitioner would not confer any jurisdiction upon any authority.

9. Sec.17 of the Indian Registration Act clearly provides that if tangible immovable property worth Rs.100=00 or more is to be sold, then, the transaction must be by a registered document and if the document is executed but

the same is not registered, then such document would be inadmissible in evidence in view of sec.49 of the Indian Registration Act, and such document would be admissible in evidence only for collateral purposes. Conveying title under the document is the prime cause of the document and the same would not be a collateral purpose. If from the petitioner's own showing it is clear that he has not acquired title in his favour, then, it must be held that he was not entitled to an entry in his favour. The authorities were absolutely right and justified in directing deletion of the impugned Mutation Entries.

10. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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